



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of
MUSIC INDUSTRIES ACCEPTANCE CORPORATION

Appearances:

For Appellant: Warren Stratton, its Attorney; J. O. Adams,
President of Appellant
For Respondent: Chas. J. McColgan, Franchise Tax Commissioner

O P I N I O N

This is an appeal pursuant to Section 27 of the Bank and Corporation Franchise Tax Act (Chapter 13, Statutes of 1929, as amended) from the action of the Franchise Tax Commissioner in denying the claim of Music Industries Acceptance Corporation for a refund of tax in the amount of \$552.31 paid pursuant to an assessment of deficiency tax levied against the corporation by the Commissioner based upon its return of income for the year ended December 31, 1933.

The corporation was engaged during the year for which the tax was paid solely in the business of purchasing from dealers at a discount conditional sales contracts covering the sale of musical instruments and other small chattels and collecting the deferred installments due from the purchasers under the contract: as the installments fell due. The corporation paid its franchise tax for the year ended December 31, 1934, at the rate applicable to mercantile, manufacturing and business corporations. The Commissioner, however, determined that the corporation was a financial corporation within the meaning of the Act and assessed the deficiency tax which the corporation thereupon paid under protest and which it here seeks to recover. The sole question presented by this appeal, is, accordingly, whether the Commissioner acted properly in classifying the corporation as a financial corporation for the year ended December 31, 1934.

It seems clear in view of the separate treatment of **financial** corporations in the Bank and Corporation Franchise Tax Act that the term "financial corporations" is used therein in the same manner as in Section 5219 of the Revised Statutes of the United States, relating to state taxation of national banks and prohibiting the taxation of such banks at a rate higher than that assessed upon other financial corporations. Neither Section 5219 nor the Bank and Corporation Franchise Tax Act defines the term "**financial corporations.**" The corporation and the Commissioner, however, agree that the correct definition of the term is to be found in the decisions interpreting the phrase "**other** moneyed capital" in Section 5219 and that the corporation is properly to be regarded as a financial corporation only if its capital was employed

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during the year ended December 31, 1934, in such a way as to bring it into substantial competition with the business of national banks. Mercantile National Bank v. New York, 121 U. S. 138; First National Bank of Guthrie Center v. Anderson, 269 U. S. 341; First National Bank of Hartford v. Hartford, 273 U. S. 548; Minnesota v. First National Bank of St. Paul, 273 U. S. 561.

The determination of this appeal rests, accordingly, upon the determination of whether the capital of the corporation was actually employed in substantial competition with the business of national banks during the year ended December 31, 1934. It is, therefore, necessary to ascertain whether during that year national banks engaging in business in the locality wherein Appellant's capital was employed purchased such conditional sales contracts and collected the installments due thereunder or otherwise entered into substantial competition with Appellant. The evidence introduced herein establishes that national banks in the locality in which Appellant's capital was employed did not purchase conditional sales contracts of the type purchased by Appellant and in fact refused to accept or in any manner engage in business of the type carried on by Appellant.

The affidavit of Mr. A. C. Dana states that in July, 1934, and in April 1935, he attempted to sell certain piano and radio conditional sales contracts to the Bank of America National Trust and Savings Association, Ninth and Spring Streets, Los Angeles, branch, but that the Bank on both occasions refused to purchase or handle in any manner said conditional sales contract and that the contracts were subsequently sold to the Appellant herein. The affidavit of Mr. O. D. Hodnett states that as Manager of Maytag Down-Town Shops he attempted in May, 1935, to induce the First National Bank of Los Angeles to purchase or otherwise handle conditional sales contracts covering the sale of washing machines, but that the Bank refused to accept or handle in any manner said conditional sales contracts and that the contracts were subsequently sold to the Appellant herein. The affidavit of Mr. C. W. Hyden states that in July, 1935, he attempted to induce the Citizens National Trust and Savings Bank at Los Angeles to purchase his conditional sales contracts covering the sale of radios or to lend him money and accept such contracts as collateral, but that the Bank refused to purchase or handle the contracts on any basis and that he subsequently sold the contracts to the Appellant herein,

The conclusion is inescapable that Appellant's capital was not employed during the year ended December 31, 1934, in such a way as to bring it into substantial competition with the business of national banks. It follows from this finding that Appellant was not engaged in business as a financial corporation within the meaning of Section 5219 of the Revised Statutes of the United States or the Bank and Corporation Franchise Tax Act during the year ended December 31, 1934, and that the Commission improperly classified and taxed Appellant as a financial corporation for that year.

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O R D E R

Pursuant to the views expressed in the opinion of the Board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the action of Charles J. McColgan, Franchise Tax Commissioner, in denying the claim of Music Industries Acceptance Corporation for a refund in the amount of \$552.31, said amount having been paid as a tax for the year ended December 31, 1934, based upon the return of income of said corporation for the preceding year, ~~be~~ and the same is hereby reversed. The Commissioner is hereby directed to refund to or to give the Music Industries Acceptance Corporation credit for said amount of \$552.31 paid by said corporation for said year and otherwise to proceed in conformity with this order.

Done at Sacramento, California, this 9th day of November, 1936, by the State Board of Equalization.

R. E. Collins, Chairman
Fred E. Stewart, Member
Ray Edgar, Member

ATTEST: Dixwell L. Pierce, Secretary